RECENT DECISIONS

CONSTITUTIONAL LAW—THE PRACTICE OF COMMUNICATING WITH DEPARTED SPIRITS, THOUGH A PART OF AN ESTABLISHED RELIGION, IS NOT WITHIN THE PROTECTION OF FEDERAL AND STATE CONSTITUTIONS RELATING TO RELIGIOUS LIBERTY.—The defendant was a believer in spiritualism, was a member of the National Spiritualist Association, and was licensed by the association to give spiritual advice to others. There is a statute in Oklahoma declaring that it shall be unlawful for anyone telling fortunes by means of palmistry, clairvoyance, or any other means, to make any charge therefor. At the solicitation of the complaining witness, the defendant gave her a reading while in a state of trance, and received payment therefor. The defendant was tried and convicted under the statute, but now claims that her arrest and conviction were unlawful as being an interference with the free exercise of her religious beliefs and practices. *Held,* conviction upheld. *McMasters* v. *State* (Okla. 1922), 207 Pac. 566.

It is a settled principle of American law that every person has the unquestioned right to worship God according to the dictates of his own conscience. *Cline* v. *State* (1913), 9 Okla. Cr. 40, 130 Pac. 510, 45 L. R. A. (N. S.) 108. Religious liberty, however, does not include the right to introduce and carry out every scheme or purpose which persons see fit to claim as part of their religious system, and, although there is no legal authority to constrain belief, no one can lawfully stretch his own liberty of actions so as to interfere with that of his neighbors, or violate peace and good order. *In re Frazee* (1886), 63 Mich. 396, 30 N. W. 72, 6 Am. St. Rep. 310. While the state may not interfere with the religious beliefs and opinions of a citizen, it may prohibit acts and practices which are deemed to be detrimental to the community. *Reynolds* v. *United States* (1878), 98 U. S. 145; *Davis* v. *Beason* (1890), 133 U. S. 333, 10 Sup. Ct. 299. For example, it has been held that the pretense of religious belief cannot deprive the state of the power to prohibit polygamy and all other offenses against the enlightened sentiment of mankind. *Mormon Church* v. *United States* (1890), 136 U. S. 1, 10 Sup. Ct. 792; *Davis* v. *Beason, supra.* These laws against bigamous or polygamous marriages are not to be construed as placing restrictions on religious beliefs, but only on acts and practices. *Toncray* v. *Budge* (1908), 14 Idaho 621, 95 Pac. 26.

The fact that the defendant's act was done as a matter of religious worship cannot avail to protect him from the consequences, if the act is made subject to penalty under the law. *State* v. *White* (1886), 64 N. H. 48, 5 Atl. 828; *Commonwealth* v. *Plaisted* (1889), 148 Mass. 375, 19 N. E. 224, 12 Am. St. Rep. 566, 2 L. R. A. 142. As, for example, where defendants who were beating a drum as a part of their religious service, were convicted under a statute prohibiting the beating of a drum in the compact part of a city. *State* v. *White, supra.*

In a case very similar to the instant case, the accused's guilt of vagrancy, under a statute forbidding the practice of fortune telling, was not affected

because he was a regularly ordained minister of the "National Astrological Society", whose religious principles include the casting and reading of horoscopes. *State* v. *Neitzel* (1912), 69 Wash. 567, 125 Pac. 939, 43 L. R. A. (N. S.) 203, Ann. Cas. 1914A, 896.

The question involved here does not seem to have arisen in Virginia.

CRIMINAL LAW—TEST OF INSANITY.—The defendant, a religious fanatic, committed homicide, claiming to have been directed by divine command. A plea of insanity was set up in defense. The prosecution maintained that capacity to distinguish right and wrong as to the particular act is the test of criminal responsibility, and that the defendant knew the homicide was wrong. *Held,* the defendant is guilty. *McElroy* v. *State* (Tenn. 1922), 242 S. W. 883.

There have been many tests laid down for the guidance of juries in determining the question of insanity, but there has been a growing aversion to the establishment of any fixed legal rule to govern the decision of the question. The older English cases were notably dogmatic on the subject. In *Rex* v. *Arnold* (1724), 16 How. St. Tr. 695, it was declared that an insane man was one that had the mental capacity of a brute or a wild beast. And Lord Hale laid down the rule that an insane man is one that has the understanding of a child of fourteen. Lord Mansfield declared that the test was the ability to distinguish right and wrong in the abstract. *Bellingham's Case* (1812), Col. Lun. 630. The leading case on the subject in England is *McNaughten's Case* (1843), 10 Cl. and F. 200, 2 Lawson's Cr. Def. 150. It was laid down in this case that in order to entitle the accused to acquittal, it must be shown that he is laboring under such a defect of reason as not to know that what he is doing is wrong.

This "right and wrong" test, upon which the instant case was decided, has been followed by the general current of American decisions. *Leache* v. *State* (1886), 22 Tex. A. 279, 3 S. W. 539, 58 Am. Rep. 638; *United States* v. *Faulkner* (1888), 35 Fed. 730; *Smith* v. *State* (1909), 95 Miss. 786, 49 So. 945, 27 L. R. A. (N. S.) 461, Ann. Cas. 1912A, 23; *Bond* v. *State* (1914), 129 Tenn. 75, 165 S. W. 229.

On the other hand some authorities claim that there can be no criminal responsibility, even where there is a general capacity to distinguish right and wrong, if the will is overmastered by an insane delusion on a particular subject which is the basis of the crime committed. *Commonwealth* v. *Rogers* (1844), 7 Metc. (Mass.) 500, 41 Am. Dec. 458; *Flanagan* v. *State* (1898), 103 Ga. 619, 30 S. E. 550; *Allams* v. *State* (1905), 123 Ga. 500, 51 S. E. 506. And it has been held that a mind capable of distinguishing right and wrong in the abstract can be overpowered by an insane irresistible impulse. *De Jarnette* v. *Commonwealth* (1881), 75 Va. 867; *Thurman* v. *Commonwealth* (1908), 107 Va. 912, 60 S. E. 99. But the so-called moral mania and emotional insanity as defenses have been looked upon with disfavor, as tending to establish doctrines too dangerously well adapted to the use of confirmed criminals. *Scott* v. *Commonwealth* (1863), 4 Metc. (Ky.) 227, 83 Am. Dec. 461; *People* v. *Foy* (1893), 138 N. Y. 664, 34 N. E. 396.

The reasonable view seems to have been taken in *De Jarnette* v. *Commonwealth, supra*: "It is not possible, in the nature of things, that the court can lay down any abstract rules with which to measure the minds